

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY
COURT NO. 13**

CRESCENT MANAGEMENT	§	
Plaintiff Below,	§	
Appellee	§	
	§	
VS	§	C.A. No. JP13-23-004544
	§	
	§	
MONIQUE S JOHNSON	§	
Defendant Below,	§	
Appellant	§	

TRIAL DE NOVO

Submitted: July 25, 2023
Decided: August 8, 2023

APPEARANCES:

Crescent Management Inc/Harbor House, Plaintiff, appeared represented by Form 50 agent
Lesley Neal
Monique S Johnson, Defendant, appeared represented by attorney Richard T Wilson, Esquire

Sean McCormick, Deputy Chief Magistrate
Susan Ufberg, Justice of the Peace
Peter Burcat, Justice of the Peace

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
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CIVIL ACTION NO: JP13-23-004544

CRESCENT MANAGEMENT VS MONIQUE S JOHNSON

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Procedural and Factual Background

On April 17, 2023, Plaintiff/Appellee CRESCENT MANAGEMENT INC/HARBOR HOUSE, by and through its *Form 50* agent Karla Ortega, filed the present Landlord-Tenant Complaint against Defendant/Appellant MONIQUE S. JOHNSON. Plaintiff/Appellee sought a monetary recovery and summary possession of a rental property. Plaintiff/Appellee alleged Defendant/Appellant continued to occupy the rental property and had failed to pay rent for the property. The case was scheduled for trial in JP Court 13 on July 18, 2023. All Parties were notified by the Court of the trial date. On July 14, 2023, Richard T. Wilson, Esquire, entered his appearance on behalf of Defendant/Appellant JOHNSON. On July 14, 2023, Mr. Wilson filed a Motion to Dismiss alleging the requisite Five (5) Day Notice overstated the amount of rent that was due and owing. On July 18, 2023, Ms. Ortega appeared via *Zoom* on behalf of Plaintiff/Appellee CRESCENT MANAGEMENT INC/HARBOR HOUSE. Mr. Wilson appeared with his client via *Zoom*. The Court below heard the argument for dismissal and denied the motion. The Court heard the testimony of Ms. Ortega and considered the evidence presented on behalf of Plaintiff/Appellee. Mr. Wilson did not present a defense. On July 21, 2023, the Court entered a Judgment in favor of Plaintiff/Appellee and awarded possession to Plaintiff/Appellee. On July 25, 2023, Mr. Wilson filed the present Appeal. A *Trial de Novo* was scheduled for August 7, 2023.

On August 7, 2023, a three-judge panel consisting of Deputy Chief Magistrate Sean McCormick, Justice of the Peace Susan Ufberg, and Justice of the Peace Peter Burcat convened for the *Trial de Novo*. Plaintiff/Appellee CRESCENT MANAGEMENT INC/HARBOR HOUSE appeared via *Zoom* by and through its *Form 50* agent Lesley Neal. Defendant/Appellant MONIQUE S. JOHNSON appeared with Mr. Wilson via *Zoom*. Mr. Wilson renewed his Motion to Dismiss based on an over-inflated Five (5) Day Notice. The Panel took Judicial Notice of Plaintiff/Appellee's Complaint and the exhibits submitted by Ms. Ortega in advance of the trial below. Specifically, the Panel reviewed the Five-Day Notice dated April 6, 2023, and sent by Landlord/Plaintiff/Appellee on April 6, 2023 to Tenant/Defendant/Appellant. The Notice advised Ms. Johnson she must pay a total of \$ 1,182.00 to avoid a suit being brought against her in JP Court 13 for the amount due and owing, and possession of the rental property. The Notice listed rent in the amount of \$ 1,145.00 for April 2023, and a late fee in the amount of \$ 57.25. No payment was received by Landlord/Plaintiff/Appellee and therefore Plaintiff/Landlord/Appellee filed the present action on April 17, 2023.

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Findings

The *Landlord-Tenant Code* regulates and sets forth the legal rights, remedies and obligations of all of the parties to a residential rental agreement within the State of Delaware. See 25 *Del.C.* §5101, et seq. As per Plaintiff's *Concise Statement of Facts* as set forth in its Complaint, the case at bar appears to be a residential Landlord-Tenant action.

A landlord's remedies for a tenant's failure to pay rent are set forth in 25 *Del.C.* §5502(a), which states in pertinent part:

A landlord or the landlord's agent may, any time after rent is due, including the time period between the date the rent is due and the date under this Code when late fees may be imposed, demand payment thereof and notify the tenant in writing that unless payment is made within a time mentioned in such notice, to be not less than 5 days after the date notice was given or sent, the rental agreement shall be terminated. If the tenant remains in default, the landlord may thereafter bring an action for summary possession of the dwelling unit or any other proper proceeding, action or suit for possession.

In addition, a landlord may bring an action against a tenant for Summary Possession of a demised premises if the tenant "has wrongfully failed to pay the agreed rent." 25 *Del.C.* §5702(2).

As stated in 25 *Del.C.* §5502(a), the landlord is required to send a formal demand for payment to a tenant prior to commencing an action for Summary Possession. The demand notice is referred to as "the Five-Day Letter" or "Five Day Notice" because a landlord must provide the tenant at least a minimum of five (5) days to cure the non-payment of rent. The purpose of the letter is to advise the tenant that if the tenant fails to pay the rent that is due and owing the landlord, the lease agreement may be terminated, and the landlord could file an action in the JP Court seeking a monetary recovery and summary possession of the rental property. Plaintiff's Five-Day Notice herein included a claim for outstanding rent and a late fee. Rent and a late fee are permissible amounts that can be included in a Five-Day Notice. Mr. Wilson has made a Motion for Dismissal alleging the Five-Day Notice submitted by Landlord/Plaintiff/Appellee included an impermissible fee in the alleged total amount outstanding as of the date of the Notice. Upon inquiry from the Panel, Ms. Neal stated she did not have an opposition to the Motion. She did state however Ms. Johnson continued to have an outstanding balance that did not include the court fee as mentioned by Mr. Wilson. Since the issue of the outstanding balance as of April 6, 2023 (the date of the Five-Day Notice) was raised, it was important for the Panel to review Plaintiff/Appellee's ledger. Ms. Ortega had filed a ledger as an exhibit for the trial below. The Panel took Judicial Notice Plaintiff had assessed a \$ 48.75 "Court Fee Income – COURT FILING FEE" on Ms. Johnson's account on January 26, 2023. That Court Filing Fee was for JP13-22-012957, a case involving the same Parties herein. The case had been withdrawn by the Plaintiff in that case, Crescent Management Inc/Harbor House, on January 24, 2023. Although the case was withdrawn, and therefore no court costs were awarded, Plaintiff/Appellee still added the court filing fee to Defendant/Appellant's account two (2) days later. The \$ 48.75 charge thereafter skewed the account balance moving forward. The court filing fee cannot be considered as rent and therefore, the balance claimed as due and owing in the Five-Day Notice sent to Defendant/Appellant was overstated by \$ 48.75. By removing the \$ 48.75 from the running balance, the correct amount due and owing as of April 6, 2023, should have been \$ 1,133.25. The \$ 1,182.00 as stated in the Five-Day Notice to Defendant/Appellant is an inflated amount, and therefore, the Five-Day Notice is not compliant with 25 *Del. C.* §5502. This does not mean the Landlord cannot pursue an action for the full amount claimed as due and owing. The limitation, and the reason for the dismissal, is the improper inclusion of the court filing fee charge in the total amount as set forth in the Five-Day Notice.

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Order

Based upon the foregoing, the Panel GRANTS Appellant's Motion to Dismiss and Orders that this case is **Dismissed without Prejudice**.

IT IS SO ORDERED 08th day of August, 2023

/s/ Sean McCormick (SEAL)
SEAN MCCORMICK
DEPUTY CHIEF MAGISTRATE
ON BEHALF OF THREE JUDGE PANEL

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).

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